

Remarks

Upon entry of the present amendments, claims 1, 8, 10, 11, 12, 14, 15 and 19-26 will be pending. Claims 2-7, 9, 13 and 16-18 have been cancelled without prejudice or disclaimer. Claims 19-26 are new. New claims 19-26 are directed to SEQ ID NO:7 polypeptides. Claims 19-26 are analogous to claims 1-11 which previously issued for SEQ ID NO:16 polypeptides in divisional application 09/224,110 (now U.S. Patent No. 6,337,195) of which the present application claims benefit. Support for new claims 19-26 can be found in the specification and claims as originally filed. For example, support can be found in the specification at: page 6, paragraph [0026]; page 21, paragraph [0087] to page 22, paragraph [0089]; page 23, paragraph [0093] to page 29, paragraph [0116]. No new matter has been added.

Provisional Election With Traverse

The Examiner has required an election under 35 U.S.C. § 121 between Groups I to VII. The Examiner contends that the inventions or groups of inventions “are independent or distinct for the reasons given above and have acquired a separate status in the art...”. *See*, Paper No. 05152006, pages 2-3.

In response, Applicants provisionally elect, *with traverse*, the invention of Group II represented by originally filed claims 8-9, and now represented (upon entry of the present amendment) by claim 8 and new claims 19-26. Applicants reserve the right to file one or more divisional applications directed to non-elected inventions and/or subject matter encompassed by claims canceled herein.

With respect to the Examiner’s division of the invention into seven groups, and the reasons stated therefor, Applicants respectfully disagree and traverse. Applicants point out that even where patentably distinct inventions appear in a single application, restriction remains improper unless the Examiner can show that the search and examination of these groups would entail a “serious burden”. *See* M.P.E.P. § 803. In the present situation, a showing that search and examination of the pending claims would entail a serious burden has not been made.

Applicants submit that a search of polynucleotide claims of the invention would provide useful information for examining claims directed to both polynucleotides and the polypeptides encoded by these polynucleotides. In certain claims this is especially true

because the polynucleotide sequence of these claims is defined in part by the polypeptide that the polynucleotide sequence encodes. Further, Applicants point out that, in many if not most publications, where a published nucleotide sequence is an open reading frame, the authors also include, as a matter of routine, the deduced amino acid sequence of the encoded polypeptide.

Similarly, a search of the polypeptide claims of the invention would clearly provide useful information for the examination of claims directed to antibodies either produced in response to or having affinity for the subject polypeptides. This is because antibodies are frequently defined by the antigens that they are produced in response to and the epitopes to which they bind. Moreover, in many publications where an antibody is described, the antigen that it was produced in response to is also described. Likewise, a search of the polypeptide claims of the invention would also provide useful information for the examination of claims directed to antagonist/inhibitors of said polypeptides. Moreover, searches of publications directed to polynucleotides, polypeptides, antibodies, and antagonists/inhibitors would also reveal pertinent art, if present, with respect to using such molecules for treating or diagnosing disorders related to such molecules.

Accordingly, Applicants submit that the searches for polynucleotides, polypeptides, antibodies, and antagonists/inhibitors of the invention, as well as methods of treating or diagnosing disorders using such molecules would be overlapping. Accordingly, Applicants request that the Examiner reconsider and withdraw the restriction requirement and examine the subject matter of Groups I-VII together in the present application.

Applicants retain the right to petition from the restriction requirement under 37 C.F.R. § 1.144.

Conclusion

Applicants respectfully request that the above-made remarks be entered and made of record in the file history of the instant application. The Examiner is invited to call the undersigned at the phone number provided below if any further action by Applicant would expedite the examination of this application.

If any fees, not already accounted for, are due in connection with the filing of this paper, please charge such fees to our Deposit Account No. 08-3425. If a fee, not already

accounted for, is required for an extension of time under 37 C.F.R. § 1.136, such an extension is requested and the fee should also be charged to our Deposit Account.

Respectfully submitted,

Date: 6/26/2006


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